

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

(b)(6)

DATE:

AUG 30 2013

OFFICE: TEXAS SERVICE CENTER FILE: [REDACTED]

IN RE:

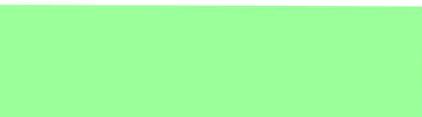
Petitioner:

Beneficiary: [REDACTED]

PETITION:

Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center (director), denied the employment-based immigrant visa petition. The petitioner appealed the decision to the Administrative Appeals Office (AAO). The appeal will be summarily dismissed as abandoned pursuant to 8 C.F.R. § 103.2(b)(13)(i).

The petitioner states that it is a software consulting firm. It seeks to permanently employ the beneficiary in the United States as a programmer analyst. The petitioner requests classification of the beneficiary as an advanced degree professional pursuant to section 203(b)(3)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(2). The petition is accompanied by a labor certification approved by the U.S. Department of Labor.

The director's decision denying the petition concluded that the beneficiary does not have an advanced degree or a bachelor's degree plus five years of progressive experience as required by the terms of the labor certification. The director also dismissed a motion to reconsider.

The record shows that the appeal is properly filed and makes a specific allegation of error in law or fact. The procedural history in this case is documented by the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.¹

On June 28, 2013, the AAO sent the petitioner a notice of intent to dismiss the appeal (NOID) and sent a copy to counsel of record. The AAO discussed some of the discrepant information contained within the record of proceedings relevant to the beneficiary's educational credentials and work experience and determined that it did not appear that the beneficiary was eligible as an advanced degree professional as required by the terms of the labor certification. The NOID allowed the petitioner 45 days in which to submit a response. The AAO informed the petitioner that failure to respond to the NOID would result in a dismissal of the appeal.

As of the date of this decision, the petitioner has not responded to the AAO's NOID. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. *See* 8 C.F.R. § 103.2(b)(14). Since the petitioner failed to respond to the NOID, the appeal will be summarily dismissed as abandoned pursuant to 8 C.F.R. § 103.2(b)(13)(i).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

¹ The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by 8 C.F.R. § 103.2(a)(1). The record in the instant case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

(b)(6)

NON-PRECEDENT DECISION

ORDER: The appeal is summarily dismissed as abandoned.